2022

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 22

Title 99 (Chapter 1 to 19)

(As Revised 2020)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

SCHEDULE OF NEW SECTIONS

There are no new sections added in this supplement.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME TWENTY TWO

TITLE 99.

CRIMINAL PROCEDURE

Chapter 15. Pretrial Proceedings. 99-15-1
Chapter 19. Judgment, Sentence, and Execution. 99-19-1

CHAPTER 1.

GENERAL PROVISIONS; TIME LIMITATIONS; COSTS

§ 99-1-5. Time limitation on prosecutions.

JUDICIAL DECISIONS

4. Miscellaneous.

Trial court did not err by denying defendant's motion to dismiss because the State commenced his prosecution within the time period provided by this section, as the search warrants and defendant's arrest warrant were executed on July 9, 2015 and a grand jury indicted defendant on July 28, 2016. Defendant's 2019 reindictment was not untimely because it contained charges almost identical to those in the 2016 indictment except for one count's amendment to reflect the specific amount of synthetic cannabinoids seized from defendant's store. Murshid v. State, 326 So. 3d 489, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. 2021), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 318 (Miss. 2021), cert. denied, — U.S. —, 142 S. Ct. 1172, 212 L. Ed. 2d 42, 2022 U.S. LEXIS 922 (U.S. 2022).

§ 99-1-7. Time limitation on prosecutions; commencement of prosecution.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by denying defendant's motion to dismiss because the State commenced his prosecution within the time period provided by this section, as the search warrants and defendant's arrest warrant were executed on July 9, 2015 and a grand jury indicted defendant on July 28, 2016. Defendant's 2019 reindictment was not untimely because it contained charges almost identical to those in the 2016 indictment except for one count's amendment to reflect the specific amount of synthetic cannabinoids seized from defendant's store. Murshid v. State, 326 So. 3d 489, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. 2021), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 318 (Miss. 2021),

cert. denied, — U.S. —, 142 S. Ct. 1172, 212 L. Ed. 2d 42, 2022 U.S. LEXIS 922 (U.S. 2022).

Trial court properly dismissed a father's malicious-prosecution claim because none of the evidence he submitted amounted to the commencement of a criminal proceeding; while the trial court used a statutory definition to define the initiation of a criminal proceeding, there was no error because such finding was supported by caselaw. Wilbourn v. Wilbourn, 314 So. 3d 104, 2021 Miss. LEXIS 16 (Miss. 2021).

CHAPTER 5.

BAIL

§ 99-5-27. Bail agent may arrest and surrender principal; return of defendant out on bond.

JUDICIAL DECISIONS

1. In general.

Defendants' actions were not justified by this section and their kidnapping convictions were affirmed because the evidence showed that defendants never surrendered the victim to the jail, defendants handcuffed him, put him in a trunk of a vehicle, drove him to a remote area, handcuff him to a post, and sexually assaulted him for not paying an amount owed on a bond. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 5, 2022).

CHAPTER 7.

INDICTMENT

§ 99-7-9. Presentment; entry on minutes of court; warrant to issue; copy of indictment to be served on defendant; informing victim as to status of charge.

JUDICIAL DECISIONS

7. Waiver of defects.

Issues raised by defendant that the indictment was fatally defective as the grand jury foreman did not sign it, nor was it accompanied by an affidavit from the foreman as required by Miss. Code Ann. § 99-7-9 were technical and nonjurisdictional deficiencies that were waived because defendant failed to timely raise them in the trial court. Smith v. State, 328 So. 3d 204, 2021 Miss. App. LEXIS 382 (Miss. Ct. App. 2021).

§ 99-7-37. Murder and manslaughter.

JUDICIAL DECISIONS

4. Sufficiency of indictment.

Because the indictment tracked the language of the manslaughter statute and the maltreatment statute, it was sufficient to put defendant on notice of the charges against her; the indictment's use of the common term "misdemeanor manslaughter" did not render it defective, and the indictment specifically identified not only the underlying misdemeanor (mal-

treatment) but also the type of maltreatment (failure to provide sufficient medical attention). Brannan v. State, 319 So. 3d 1119, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. 2020), cert. denied, 318 So. 3d 484, 2021 Miss. LEXIS 172 (Miss. 2021).

Defendant's indictment did not fail to list an essential element of the murder charge because the indictment included the essential elements as required by statute and precedent; the manner by which he caused the victim's death was not required for the indictment because the cause of death was not an essential element of murder. Carter v. State, 313 So. 3d 495, 2020 Miss. App. LEXIS 118 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 729, 2021 Miss. LEXIS 81 (Miss. 2021).

CHAPTER 11.

JURISDICTION AND VENUE

§ 99-11-3. Local jurisdiction; venue; venue regarding indictments returned by state grand jury [Subsection (2) repealed effective July 1, 2024].

JUDICIAL DECISIONS

2. Proof of venue, generally.

Trial court did not err in submitting the issue of venue to the jury. Because there was conflicting testimony regarding the identity of the county in which an assault occurred, ambiguity existed, making it appropriate for the jury to determine venue. Kidder v. State, 326 So. 3d 1027, 2021 Miss. App. LEXIS 170 (Miss. Ct. App.), cert. denied, 326 So. 3d 467, 2021 Miss. LEXIS 290 (Miss. 2021).

CHAPTER 13.

INSANITY PROCEEDINGS

§ 99-13-11. Mental examination of person charged with felony; cost.

JUDICIAL DECISIONS

2. Grounds for appointment of examiner.

Although the trial court initially found that defendant was incompetent to stand trial, following a second competency hearing, the court found that defendant was competent to stand trial after receiving treatment. Furthermore, after defendant withdrew an insanity defense, there was no evidence or reasonable grounds that the court should have sua sponte ordered a competency hearing on the first day of trial based on defendant's demeanor at trial as defendant actively participated in the proceedings and engaged in discussions with defendant's counsel. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

CHAPTER 15.

PRETRIAL PROCEEDINGS

Pretrial Intervention Program. 99-15-101

IN GENERAL

PRETRIAL INTERVENTION PROGRAM

Sec.
99-15-107. Ineligibility for intervention.

§ 99-15-107. Ineligibility for intervention.

A person shall not be eligible for the intervention program provided by Sections 99-15-101 through 99-15-127 if the person has been charged with:

(a) Any crime of violence listed in Section 97-3-2;

(b) Any offense pertaining to trafficking in a controlled substance, as provided in Section 41-29-139(f); or

(c) Any crime of fraud or embezzlement committed in a public office pursuant to Section 97-7-11 or 97-11-31, amounting to or exceeding Ten Thousand Dollars ($10,000.00).

HISTORY: Laws, 1983, ch. 445, § 4; reenacted, Laws, 1987, ch. 329, § 4; Laws, 2014, ch. 457, § 13, eff from and after July 1, 2014; Laws, 2021, ch. 327, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment rewrote the section, which read: "A person shall not be considered for intervention if he or she has been charged with any crime of violence pursuant to Section 97-3-2. A person shall not be eligible for acceptance into the intervention program provided by Sections 99-15-101 through 99-15-127 if such person has been charged with an offense pertaining to trafficking in a controlled substance, as provided in Section 41-29-139(f)."

CHAPTER 17.

TRIAL

§ 99-17-1. Indictments to be tried within 270 days of arraignment.

JUDICIAL DECISIONS

ANALYSIS

13. Length of delay.
14. — No prejudice; length of delay.
17. Arraignment.

13. Length of delay.

14. — No prejudice; length of delay.

In a conviction of simple assault domestic violence, defendant's statutory speedy trial rights were not violated because he experienced no oppressive pretrial incarceration and he failed to show that the delay hindered the preparation of his defenses. Eubanks v. State, 341 So. 3d 896, 2022 Miss. LEXIS 165 (Miss. 2022).

17. Arraignment.

Defendant's statutory right to a speedy trial was not violated because his trial began 253 days after he was arraigned. Golden v. State, 323 So. 3d 1122, 2021 Miss. App. LEXIS 153 (Miss. Ct. App. 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 88 (Miss. 2022).

§ 99-17-9. Trial in the absence of accused.

JUDICIAL DECISIONS

5. Particular circumstances.

Trial court did not abuse its discretion by denying defendant's motion for a continuance and proceeding in absentia because the record was clear that defendant was aware of he trial date, made preparations for trial, and failed to explain her absence to her attorney of the trial court. Benthall v. State, 311 So. 3d 697, 2021 Miss. App. LEXIS 69 (Miss. Ct. App. 2021).

CHAPTER 19.

JUDGMENT, SENTENCE, AND EXECUTION

In General. 99-19-1

IN GENERAL

Sec.
99-19-51. Manner of execution of death sentence; execution team; confidentiality of identities of State Executioner and his or her deputies, members of execution team, supplier of lethal injection chemicals and witnesses listed in Section 99-19-55(2); immunity.
99-19-53. Execution of death sentence; state executioner.
99-19-55. Execution of death sentence; procedure; witnesses; certificate of execution; disposition of body.

§ 99-19-51. Manner of execution of death sentence; execution team; confidentiality of identities of State Executioner and his or her deputies, members of execution team, supplier of lethal injection chemicals and witnesses listed in Section 99-19-55(2); immunity.

(1) At the discretion of the Commissioner, the Deputy Commissioner for Finance and Administration and the Deputy Commissioner for Institutions of the Mississippi Department of Corrections, the manner of inflicting the punishment of death shall be by one of the following: (a) intravenous injection of a substance or substances in a lethal quantity into the body; (b) nitrogen hypoxia; (c) electrocution; or (d) firing squad, until death is pronounced by the county coroner where the execution takes place or by a licensed physician according to accepted standards of medical practice. Upon receipt of the warrant of execution from the Mississippi Supreme Court, the Commissioner of Corrections shall, within seven (7) days, provide written notice to the condemned person of the manner of execution. It is the policy of the State of Mississippi that intravenous injection of a substance or substances in a lethal quantity into the body shall be the preferred method of execution.

(2) The Commissioner of Corrections has the authority and discretion to select and obtain the substances and the means necessary to carry out an

execution, and may adopt and promulgate rules and regulations as the Commissioner deems necessary to administer and implement the provisions of this section.

(3)(a) The Commissioner of Corrections shall select an execution team to assist the State Executioner and his deputies. The execution team shall consist of those persons, including all medical personnel, who provide direct support for the administration of lethal chemicals, those individuals involved in assisting in the execution in any capacity and those personnel assigned to specific duties related to an execution.

(b) For the purposes of this section, "supplier of lethal injection chemicals" means a supplier or suppliers of lethal injection chemicals located within the State of Mississippi.

(c) The identities of the State Executioner and his deputies, all members of the execution team, a supplier of lethal injection chemicals, and those witnesses listed in Section 99-19-55(2) who attend as members of the victim's family or designated by the condemned person shall at all times remain confidential, and the information is exempt from disclosure under the provisions of the Mississippi Public Records Act of 1983.

(4) Notwithstanding any provision of law to the contrary, any portion of any record of any kind that could identify a person as being a current or former State Executioner, his or her deputies, a member of an execution team, a current or former supplier of lethal injection chemicals, or those witnesses listed in Section 99-19-55(2) who attend as members of the victim's family or designated by the condemned person, shall at all times be confidential, exempt, and protected from disclosure, but the remainder of the record shall not be protected unless otherwise provided by law. A court shall preserve the secrecy of all confidential and exempt information described in this section by reasonable means, which may include granting protective orders, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose such information without prior court approval.

(5) Notwithstanding any provision of law to the contrary, if the State Executioner, his or her deputies, a member of the execution team or supplier of lethal injection chemicals is licensed by a board or department, the licensing board or department shall not censure, reprimand, suspend, revoke, or take any other disciplinary action against the person's license because the person participated in a lawful execution. Any person or institution assisting with or participating in carrying out an execution in accordance with this statute shall be presumed to be acting in good faith. Any person or institution acting in good faith in connection with carrying out an execution shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. The State Executioner and his deputies, and all members of the execution team perform their respective functions as official duties on behalf of the state or any agency of the state.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 2(24); 1857, ch. 64,

art. 323; 1871, § 2816; 1880, § 3091; 1892, § 1447; 1906, § 1520; Hemingway's 1917, § 1282; 1930, § 1307; 1942, § 2550; Laws, 1940, ch. 242; Laws, 1954, ch. 220, § 1; Laws, 1984, ch. 448, § 2; Laws, 1994, ch. 479, § 1; Laws, 1998, ch. 404, § 1; Laws, 2016, ch. 452, § 1; Laws, 2017, ch. 406, § 1, eff from and after passage (approved Apr. 5, 2017); Laws, 2022, ch. 414, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment inserted references to "State Executioner," "his or her deputies," or similar language, throughout; rewrote (1); deleted former (2) through (4); redesignated former (5) through (8) as (2) through (5); rewrote (3)(a); and in (4), substituted "who attend as members of the victim's family or designated by the condemned person" for "who attend as members of the victim's or the condemned person's immediate family."

§ 99-19-53. Execution of death sentence; state executioner.

(1) The Governor shall appoint the State Executioner who shall serve at the pleasure of the Governor and until his successor shall have been duly appointed to replace him.

(2) The State Executioner, or his duly authorized representative, shall supervise and inflict the punishment of death as the same is hereby provided. All duties and necessary acts pertaining to the execution of a convict shall be performed by the Commissioner of Corrections except where such duties and actions are vested in the State Executioner. The State Executioner shall receive for his services in connection therewith compensation in the sum of Five Hundred Dollars ($500.00) plus all actual and necessary expenses for each such execution, to be paid by the county where the crime was committed. The county of conviction shall likewise pay the fees of the attending physician or physicians in attendance. The State Executioner may appoint not more than two (2) deputies who shall be paid One Hundred Fifty Dollars ($150.00) per execution and mileage as authorized by law, to be paid by the county where the crime was committed, to assist in the infliction of the punishment of death. The Executioner may appoint such other assistants as may be required; however, such assistants shall not be entitled to compensation or travel expenses. The State Executioner and his deputies may waive compensation, per diem or travel expenses.

(3) Any infliction of the punishment of death by administration of the required lethal substance or substances in the manner required by law shall not be construed to be the practice of medicine or nursing. Any pharmacist is authorized to dispense drugs to the State Executioner or the Commissioner of the Mississippi Department of Corrections without a prescription for the purpose of this chapter.

(4) The State Executioner shall be custodian of all equipment and supplies involved in the infliction of the death penalty. All expenses for the maintenance and protection of the property, together with operating expenses, which as a practical matter cannot be allocated to the county of conviction, shall be paid out of funds designated by law for that purpose or out of the general support fund of the Mississippi Department of Corrections.

(5) The State Executioner shall receive the per diem compensation authorized in Section 25-3-69 in addition to actual and necessary expenses,

including mileage as authorized by law, for each day, not to exceed three (3) days each month, spent in maintaining the equipment and supplies involved in the infliction of the death penalty or preparing for an execution which does not occur. Such payments shall be paid out of funds designated by law for that purpose or out of the general support fund of the Mississippi Department of Corrections.

HISTORY: Codes, 1942, § 2555; Laws, 1940, ch. 242; Laws, 1954, ch. 220, § 3; Laws, 1954, Ex. ch. 33, § 2; Laws, 1955, Ex. ch. 41, § 2; Laws, 1968, ch. 361, § 62; Laws, 1984, ch. 448, § 3, eff from and after July 1, 1984; Laws, 2022, ch. 414, § 2, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment designated the former fifth paragraph as (1), and designated the former first through fourth paragraphs as (2) through (5); in (2), inserted "State" preceding "Executioner" in the fifth sentence, and added the last sentence; and in (3), inserted "or the Commissioner of the Mississippi Department of Corrections" in the last sentence.

§ 99-19-55. Execution of death sentence; procedure; witnesses; certificate of execution; disposition of body.

(1) Whenever any person shall be condemned to suffer death for any crime for which such person shall have been convicted in any court of any county of this state, such punishment shall be inflicted at 6:00 p.m. or as soon as possible thereafter within the next twenty-four (24) hours at an appropriate place designated by the Commissioner of the Mississippi Department of Corrections. All male persons convicted of a capital offense wherein the death sentence has been imposed shall be immediately committed to the Department of Corrections and transported to the maximum security cell block. All female persons convicted of a capital offense wherein the death sentence has been imposed shall be immediately committed to the Department of Corrections and housed in an appropriate facility designated by the Commissioner of the Mississippi Department of Corrections. Upon final affirmance of the conviction, the punishment shall be imposed in the manner provided by law. The State Executioner or his duly authorized deputy shall supervise and perform such execution.

(2) When a person is sentenced to suffer death in the manner provided by law, it shall be the duty of the clerk of the court to deliver forthwith to the Commissioner of Corrections a warrant for the execution of the condemned person. It shall be the duty of the commissioner forthwith to notify the State Executioner of the date of the execution and it shall be the duty of the said State Executioner, or any person deputized by him in writing, in the event of his physical disability, as hereinafter provided, to be present at such execution, to perform the same, and have general supervision over said execution. In addition to the above designated persons, the Commissioner of Corrections shall secure the presence at such execution of the sheriff, or his deputy, of the county of conviction, at least one (1) but not more than two (2) physicians or the county coroner where the execution takes place, and bona fide members of the

press, not to exceed eight (8) in number, and at the request of the condemned, such ministers of the gospel, not exceeding two (2), as said condemned person shall name. The Commissioner of Corrections shall also name to be present at the execution such members of the execution team deemed by him or her to be necessary to insure proper security. No other persons shall be permitted to witness the execution, except the commissioner may permit the condemned person to designate two (2) witnesses, if they so request and two (2) members of the victim's family as witnesses, if they so request. Provided further, that the Governor may designate two (2) additional persons of good and reputable character to witness an execution. No person shall be allowed to take photographs or other recordings of any type during the execution. The absence of the sheriff, or deputy, after due notice to attend, shall not delay the execution.

(3) The Commissioner of Corrections, or his duly authorized representative, and the physician or physicians or county coroner who witnessed such execution shall prepare and sign officially a certificate setting forth the time and place thereof and that such condemned person was then and there executed in conformity to the sentence of the court and the provisions of Sections 99-19-51 through 99-19-55, which certificate shall be filed with the clerk of the court where the conviction of the criminal was had, and the clerk shall subjoin the certificate to the record of the conviction and sentence.

(4) The body of the person so executed shall be released immediately by the State Executioner, or his duly authorized representative, to the relatives of the dead person, or to such friends as may claim the body. The Commissioner of the Mississippi Department of Corrections shall have sole charge of burial in the event the body is not claimed as aforesaid, and his discretion in the premises shall be final. The Commissioner may donate the unclaimed body of an executed person to the University of Mississippi Medical Center for scientific purposes. The county of conviction shall bear the reasonable expense of burial in the event the body is not claimed by relatives or friends or donated to the University of Mississippi Medical Center.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 2(25); 1857, ch. 64, art. 324; 1871, § 2817; 1880, § 3092; 1892, § 1448; 1906, § 1521; Hemingway's 1917, § 1283; 1930, § 1308; 1942, § 2551; Laws, 1924, ch. 229; Laws, 1940, ch. 242; Laws, 1954, ch. 220, § 2; Laws, 1954, Ex. ch. 33, § 1; Laws, 1955, Ex. ch. 41, § 1; Laws, 1984, ch. 448, § 4; Laws, 1994, ch. 479, § 2; Laws, 1998, ch. 361, § 1, eff from and after July 1, 1998; Laws, 2022, ch. 414, § 3, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (1), substituted "Commissioner of the Mississippi Department of Corrections" for "Commissioner of Corrections on the premises of the Mississippi State Penitentiary at Parchman, Mississippi," deleted "at the Mississippi State Penitentiary at Parchman, Mississippi" at the end of the second sentence, deleted the former third sentence, and inserted "the Mississippi Department of" in the present third sentence; in (2), substituted "members of the execution team" for "officers or guards as may be," substituted "permit the condemned person to designated two (2) witnesses" for "permit two (2) members of the condemned person's immediate family as witnesses," deleted "immediate" following "members of the victim's," and

substituted "Governor may designate" for "Governor may, for good cause shown, permit"; in (3), deleted "The State Executioner, or his duly authorized representative" from the beginning and made a related change, substituted "that such condemned person" for "that such criminal" and deleted "and shall procure the signatures of the other public officers and persons who witnessed such execution" following "99-19-55"; and in (4), inserted "the Mississippi Department of."

§ 99-19-71. Expunction of misdemeanor conviction of first offender upon petition; expunction of certain felony convictions upon petition.

JUDICIAL DECISIONS

1. In general.

Trial court appropriately vacated an order of expungement under Miss. R. Civ. P. 60(b)(6), although express findings were not made, because the facts in the record sufficed to show that the order granting the motion to set aside the order of expungement could have and should have been set aside; nothing entitled appellant to an expungement because he already had been indicted with the potential enhanced-sentencing penalty for two years before the filing of his expungement. Johnson v. State, 333 So. 3d 116, 2022 Miss. App. LEXIS 12 (Miss. Ct. App. 2022).

SENTENCING OF HABITUAL CRIMINALS

§ 99-19-81. Sentencing of habitual criminals to maximum term of imprisonment.

JUDICIAL DECISIONS

ANALYSIS

3. Sufficiency of prior sentences, generally.
5. —Separate incidents.
6. Proportionality.
16. Proof of prior conviction or sentence.
17. Particular circumstances.
18. Sentence not excessive.
20. Habitual offender sentences.

3. Sufficiency of prior sentences, generally.

5. —Separate incidents.

Defendant received sufficient notice the State of Mississippi intended to charge him as a habitual offender because the State filed a motion to amend the indictment and specifically listed defendant's two prior convictions, defendant made no objections during trial to the sentencing orders showing his previous convictions, and made no argument during sentencing. Edwards v. State, 305 So. 3d 1186, 2020 Miss. App. LEXIS 161 (Miss. Ct. App.), cert. denied, 308 So. 3d 437, 2020 Miss. LEXIS 476 (Miss. 2020), cert. denied, 308 So. 3d 438, 2020 Miss. LEXIS 475 (Miss. 2020).

6. Proportionality.

Because the sentences imposed by the circuit court, a maximum of 10 years without eligibility for parole, fell within the applicable statutory sentencing limits, there was no inference of gross disproportionality. Harris v. State, 311 So. 3d 638, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 832, 2021 Miss. LEXIS 32 (Miss. 2021).

16. Proof of prior conviction or sentence.

Defendant was properly sentenced as a nonviolent habitual offender because Alleyne and Apprendi did not require the State to prove prior convictions to a jury and the State presented adequate certi-

fied evidence to prove defendant's three prior qualifying convictions, to which he did not object. Ward v. State, 297 So. 3d 286, 2020 Miss. App. LEXIS 69 (Miss. Ct. App. 2020).

17. Particular circumstances.

Defendant was properly sentenced as an habitual offender because defendant was properly indicted as a habitual offender, and the State offered three prior convictions to support his habitual offender enhancement; the fact that one of defendant's prior convictions had been used to enhance an earlier sentence for an unrelated offense did not subject defendant to double jeopardy. Carr v. State, 291 So. 3d 1132, 2020 Miss. App. LEXIS 66 (Miss. Ct. App. 2020).

18. Sentence not excessive.

Defendant's concurrent and consecutive maximum enhanced sentences for possession of schedule I and II controlled substances with intent to sell, conspiracy to sell a schedule I controlled substance, and possession of a firearm by a felon were not grossly excessive and disproportionate to the crimes because defendant was adjudicated a non-violent habitual offender due to defendant's prior conviction for possession of marijuana and the circuit court did not abuse its discretion by applying the subsequent drug offender enhancement. Williams v. State, 325 So. 3d 709, 2021 Miss. App. LEXIS 194 (Miss. Ct. App.), cert. denied, 324 So. 3d 802, 2021 Miss. LEXIS 268 (Miss. 2021).

20. Habitual offender sentences.

Based on the indictments contained in the supplemental record on appeal, defendant was properly sentenced as a habitual offender; the indictments showed that defendant was separately charged and convicted for two drug sales that occurred several days apart as the two drug sales clearly constituted separate incidents at different times for purposes of the statute. Manuel v. State, — So. 3d —, 2022 Miss. App. LEXIS 93 (Miss. Ct. App. Mar. 22, 2022).

Although procedurally barred, there was no error the trial court in sentencing appellant as a habitual offender because the transcript from his 2011 sentencing hearing reflected that in support of the habitual-offender portion of appellant's indictment, the State offered proof of three prior convictions for violent offenses: aggravated assault, gratification of lust, and the 1991 sexual battery conviction. Ellis v. State, — So. 3d —, 2022 Miss. App. LEXIS 194 (Miss. Ct. App. June 7, 2022).

Court of appeals addressed the merits of appellant's claim even though his post-conviction relief motion was not filed within the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act because appellant contended that the State's failure to prove beyond a reasonable doubt that his prior convictions arose from separate incidents at different times subjected him to an illegal sentence as a habitual offender. Jones v. State, 304 So. 3d 702, 2020 Miss. App. LEXIS 569 (Miss. Ct. App. 2020).

§ 99-19-83. Sentencing of habitual criminals to life imprisonment.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
6. Indictment.
9. Constitutionality.
12. Proof of prior conviction; in Mississippi.
16. Particular circumstances.

1. In general.

Trial court did not err in sentencing defendant as a habitual offender; there is no requirement that the prior convictions must be less than 10 years old. Johnson v.

State, 325 So. 3d 1177, 2021 Miss. App. LEXIS 326 (Miss. Ct. App. 2021), cert. dismissed, 338 So. 3d 128, 2022 Miss. LEXIS 130 (Miss. 2022).

6. Indictment.

Trial court did not err by sentencing defendant under this section because the indictment's clear and express reference to this section was sufficient to put defendant on notice that he could be sentenced under this section. The indictment specifically charged defendant under this section, it specifically alleged that defendant was sentenced to and served separate terms of one year or more for each prior conviction, and it alleged that defendant had been convicted of a crime of violence. Berryman v. State, 337 So. 3d 1116, 2021 Miss. App. LEXIS 460 (Miss. Ct. App. 2021).

9. Constitutionality.

Defendant's life-without-parole sentence for felony invasion did not violate his right to be free from cruel and unusual punishment because he met all the requisites of the habitual-offender sentencing requirements; the sentence was not grossly disproportionate and was constitutional pursuant to the statute. Skinner v. State, — So. 3d —, 2022 Miss. App. LEXIS 163 (Miss. Ct. App. May 17, 2022).

Defendant's life sentence without the possibility of parole for possession of marijuana, as an habitual offender under Miss. Code Ann. § 99-19-83 was upheld and did not violate his Eighth Amendment right to be free from cruel and unusual punishment as the trial judge followed our procedure and the law, defendant presented no evidence related to the Solem factors, and the trial judge sentenced defendant to the only sentence available. Russell v. State, 341 So. 3d 84, 2022 Miss. LEXIS 162 (Miss. 2022).

12. Proof of prior conviction; in Mississippi.

State properly established that defendant was a habitual offender under the statute because it provided defendant's conviction records, which showed that he had been convicted of two prior felonies, one being a crime of violence; the records also showed that defendant had been sentenced to, and served, over one year for each conviction. Pope v. State, 330 So. 3d 409, 2021 Miss. App. LEXIS 275 (Miss. Ct. App. 2021), cert. dismissed, — So. 3d —, 2022 Miss. LEXIS 6 (Miss. 2022), cert. denied, — So. 3d —, 2022 Miss. LEXIS 4 (Miss. 2022).

16. Particular circumstances.

In a case in which defendant was found guilty of possession of marijuana in an amount greater than 30 grams but less than 250 grams, the circuit court justifiably found defendant to be a violent habitual offender under Miss. Code Ann. § 99-19-83 and sentenced him to life imprisonment without eligibility for probation or parole. Because defendant failed to prove the threshold requirement of gross disproportionality, and because his habitual-offender sentence fell within the statutory guidelines, his sentence constituted a constitutionally permissible punishment for his most recent crime. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 206 (Miss. Ct. App. May 11, 2021), aff'd, 341 So. 3d 84, 2022 Miss. LEXIS 162 (Miss. 2022).

State had proved appellant's status as a violent habitual offender under Miss. Code Ann. § 99-19-83 where a regional corrections director testified about appellant's past incarcerations, and certified copies of his two prior armed-robbery convictions and sentences were placed into evidence. Brent v. State, 296 So. 3d 42, 2020 Miss. LEXIS 34 (Miss. 2020).

SEPARATE SENTENCING PROCEEDING TO DETERMINE PUNISHMENT IN CAPITAL CASES

§ 99-19-101. Jury to determine punishment in capital cases in separate sentencing proceeding; aggravating and mitigating circumstances to be considered.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

3. Jury determination.
37. Ineffective assistance of counsel.
41. Resentencing.

I. UNDER CURRENT LAW.

3. Jury determination.

Circuit judge did not err by proceeding without a jury because the statute did not apply in the context of a postconviction relief motion filed by a prisoner whose conviction and sentence were already final when Miller was decided. Booker v. State, — So. 3d —, 2019 Miss. App. LEXIS 661 (Miss. Sept. 3, 2019).

37. Ineffective assistance of counsel.

Appellant failed to show that his attorney provided ineffective assistance for failing to demand funds for a mitigation expert because there was nothing to suggest that either of counsel's alleged errors (even assuming that they were errors) had any effect on the postconviction relief proceeding, since there was nothing to suggest that any additional interviews would have yielded evidence that would have been relevant or persuasive under Miller. Nor was there anything to suggest that the psychologist or some other psychologist could or would have testified persuasively regarding appellant's alleged capacity for rehabilitation or growth and development. Booker v. State, — So. 3d —, 2019 Miss. App. LEXIS 661 (Miss. Sept. 3, 2019).

41. Resentencing.

Circuit court did not abuse its discretion by denying relief from appellant's sentence of life without parole under Miller because it found that appellant was 16 years old when he committed the murder, the victim was a 52-year-old disabled Navy veteran, although the murder may have been "amateurish," the extended planning by appellant and his accomplices belied any impetuosity of youth, and the evidence showed that appellant helped to plan the crime, was then an enthusiastic participant in beating the victim to death, and even enlisted his own cousin to help in the murder Booker v. State, — So. 3d —, 2019 Miss. App. LEXIS 661 (Miss. Sept. 3, 2019).